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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144

TO: The Commission

COMMENTS OF THE
UTILITIES TELECOMMUNICATIONS COUNCIL

Pursuant to Section 1.415 of the Commission's Rules, the

I. Introduction

UTC is the national representative on communications matters for the nation's electric, gas, water and steam utilities, and natural gas pipelines. Approximately 2,000 such companies are members of UTC, ranging in size from large combination electric-gas-water utilities serving millions of customers, to small rural electric cooperatives and water districts serving only a few thousand customers. UTCs' members operate private land mobile radio systems in the 800 MHz Industrial/Land Transportation pool and are therefore interested in any Commission proposal which would affect the demand for and availability of 800 MHz channels. Thus, UTC has an interest in this proceeding and respectfully submits its comments to the NPRM below.

The NPRM was issued in response to Petitions for Rule Making filed by the National Association of Business and Educational Radio (NABER)[2/], the American Mobile Telecommunications Association, Inc. (AMTA)[3/] and A&B Electronics, Inc.[4/], as well as numerous waiver requests filed by various parties. In the NPRM, the Commission proposes to establish new, more flexible

aggregate current SMR channels with new SMR channels to enlarge systems.

II. Discussion

While UTC expresses no opinion as to the desirability of establishing an EMSP licensing approach, UTC urges the Commission to implement rules that encourage efficiency in spectrum use and diversity in license ownership.[5/] Additionally, the Commission must prevent spectrum warehousing by implementing rules which require those granted EMSP licenses to actually build-out their systems.

To promote efficiency and diversity in ownership, UTC supports the use of moderately-sized service territories for EMSPs. The Commission proposes either Basic Trading Areas (BTAs) or Major Trading Areas (MTAs) as appropriate service territories. Of these two, UTC supports the use of BTA service territories. BTA service territories would provide EMSP licensees with the benefits of economies of scale necessary for them to provide state-of-the-art service to their customers' communities of interest. Yet, BTAs would promote diversity in license ownership because, unlike MTAs, BTAs are not so large as to unnecessarily restrict the number of EMSP licensees. As the Commission itself

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[5/] The need for efficiency can be no better illustrated than by the Commission's investigation in PR Docket No. 92-235 into the refarming of the private land mobile radio (PLMR) bands below 512 MHz.

notes, "MTAs may... exceed the anticipated geographic boundaries of these evolving SMR service offerings... [and] may not provide sufficient opportunity for small businesses and entrepreneurs to take advantage of the licensing opportunities we propose to create."[6/]

Further, BTAs would decrease the burden on EMSP licensees to build-out their systems. Under the proposed rules, EMSP licensees would have to serve either 80% of their service territories or 80% of their service territories' population. Limiting the size of the service territories would, therefore, reduce the financial and construction burdens on individual licensees and facilitate the introduction of innovative, state-of-the-art systems.

UTC opposes the Commission's proposal to initially restrict eligibility for EMSP licenses to those entities who were licensees of 800 MHz SMR systems on or before May 13, 1993. This proposal unnecessarily restricts participation by non-SMR entrepreneurs because current SMR licensees would undoubtedly

SMR licensees. Without an initial restriction on EMSP licensing, current SMR licensees could still apply for EMSP licenses and/or negotiate to become part of a licensed EMSP system.

[redacted]

must be imposed, as it has with other wide area systems[7/], to ensure that efficient use is being made of the spectrum. It is not sufficient for the Commission to simply eliminate this requirement because of the difficulty in determining an appropriate loading standard. The Commission must develop flexible yet objective loading criteria that take into account a variety of spectrum uses and technologies. For example, a list of alternative loading criteria, one of which the EMSP licensee must meet, could be adopted. This list could contain a mobile loading standard, a minimum air time per channel standard and any other standard that can objectively detail spectrum use by an EMSP licensee. EMSP licensees would have to certify that they meet at least one of these standards, and would be required to maintain records establishing that the standard has been met. These records must be available for inspection by the Commission upon request.

The Commission proposes to permit EMSP licensees that have incorporated non-SMR Category channels into their existing systems to continue to use those channels, but to prohibit the incorporation of these channels into an EMSP license. UTC supports this proposal insofar as it prevents the wide-area use of non-SMR channels by SMR licensees. However, UTC questions the necessity of permitting EMSP licensees to retain non-SMR channels

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[7/] See §90.631(g) (modified mobile loading requirements for wide area system).

once they are able, pursuant to the EMSP rules, to operate a greater number of frequencies over a larger geographic area.

[redacted]

dispatch, nuclear plant security and safety for transmission line crews and meter readers. The ability of utilities and other I/LT eligibles to use these frequencies for important internal uses should not be jeopardized simply to expand the commercial opportunities of EMSPs or SMR providers.

Under the Commission's proposed rules, an EMSP licensee would be required to construct and operate a system which covers at least 80 percent of the population or 80 percent of the geographic area in its service territory within 5 years from the date the license is granted. UTC supports this minimum coverage requirement as a way to ensure that spectrum is not warehoused by speculators. This requirement would also, if combined with an objective loading requirement, help ensure efficient use of the spectrum by requiring that service be made available to a broad class of users. However, UTC questions the feasibility of requiring a performance bond or escrow account as a means of enforcing the construction requirements. A bond or escrow account would increase the administrative burden on the Commission and the licensees while not presenting a substantially greater incentive to satisfy the construction requirements than the loss of the EMSP license. Instead, UTC recommends the Commission establish specific construction benchmarks, similar to the benchmarks applied to systems in the 220-222 MHz and 900 MHz bands.

III. Conclusion

UTC urges the Commission to adopt rules for EMSP that promote spectrum efficiency and diversity of ownership. Thus, the Commission should establish moderately-sized service areas such BTAs which properly balance economies of scale with the need to encourage diversity and innovation in the use of the spectrum. Non-SMR licensees should be eligible for EMSP licenses, including

WHEREFORE, THE PREMISES CONSIDERED, the Utilities Telecommunications Council respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted